Jugajorthy a/p Visvanathan & Anor v Pentadbir Tanah Daerah, Daerah Seberang Perai Tengah Pulau Pinang & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01(NCVC)(W)-303–09 OF 2015
ZAWAWI SALLEH, VARGHESE GEORGE AND ABDUL RAHMAN SEBLI JJCA
5 DECEMBER 2017

Civil Procedure — Pleadings — Departure from pleadings — Appellants pleaded district land administrator wrongly/fraudulently acquired their land and that other co-defendants were vicariously liable for his acts — Evidence during trial showed Director-General of Lands and Mines and not district land administrator was responsible for the acquisition as applicant for the acquisition was a federal agency — Whether appellants had not proven their pleaded case — Whether appellants also failed to prove their pleaded allegation land was not used for public purpose for which it was acquired — Whether s 68A of Land Acquisition Act 1960 ('the LAA') permitted state authority, government or any other corporation to deal with land for any purpose other than that for which it was acquired — Whether non-service of mandatory Forms G, H and K under the LAA on appellants on ground they could not be located did not invalidate acquisition exercise — Land Acquisition Act 1960 ss 11(1) & 56

Part of a piece of land ('the land') which was jointly owned by the first appellant ('R1') and her deceased husband, and which was charged to the fourth respondent ('MARA') as security for a loan, was acquired by the government on the application of the fifth respondent ('UDA') for a public purpose. The second respondent ('R2') was appointed under s 12 of the National Land Code to be in charge of and responsible for the acquisition. At the land enquiry, which R1 failed to attend, it was decided that the compensation sum payable for the acquisition would be used to redeem the land from MARA and any balance remaining thereafter would be paid to the appellants. Following the payment of the amount owing to MARA, the appellants refused to accept the balance of RM89,308.57 due to them and the said sum was paid into court pursuant to s 29(2) of the Land Acquisition Act 1960 ('the LAA 1960'). The appellants sued the respondents for various declarations and damages for alleged wrongful/fraudulent acquisition of the land. The High Court dismissed the appellants' claim holding that since their pleaded case against the first respondent ('R1') was not proven, the other allegations against the second, third and fifth respondents could not be sustained. The trial judge found that the appellants had pleaded that the land was acquired by R1 for the second, third and fifth respondents when the evidence showed that it was not R1 but R2 who was responsible for the acquisition. In the instant appeal against that

decision, the appellants contended that the trial judge was wrong in: (a) holding that R1 was not involved in the acquisition of the land; (b) failing to take into consideration that Forms G, H and K under the LAA 1960 were not served on the appellants as was mandatorily required; and (c) failing to consider that the land was not used for the public purpose for which it was acquired.

Held, dismissing the appeal:

(1) The appellants were bound by their pleadings. Their pleaded case was that R1 had wrongly and fraudulently acquired the land and that the other respondents were vicariously liable for R1's acts. The appellants failed to establish the facts in support of their pleaded case. The evidence on record clearly showed that R1 was not directly involved in the acquisition of the land but that it was R2 who was responsible. As the application for the acquisition was made by UDA, a federal agency, the acquisition process came under R2's responsibility. The process of acquisition would be R1's responsibility only if the application was made by a state agency. According to R2's witness, R1's involvement in the acquisition was only to the extent the application to acquire the land was sent to R1 by UDA. Subsequently, the application was forwarded to R2 for further action (see paras 9–13).

(2) On the evidence, the trial judge made a correct decision in holding that R1 was not involved in the acquisition of the land. The appellants had pleaded a specific case that R1 was responsible for the acquisition. However, at the time of leading of evidence, a completely new allegation was made, ie, that it was R2 who was responsible for the acquisition of the land (see paras 14–15).

(3) In the circumstances of the instant case, the non-service of the Forms G, H and K on the appellants was not due to negligence or oversight or due to any ulterior reasons on the part of R2. According to SP2, Form E could not be served on the appellants because their address was not stated in the document of title of the land. Form E was served on MARA because the land was charged to MARA which was entitled to payment of the amount due under the charge from the compensation monies payable. R2 was correct in serving Form G on MARA because as the chargee, it was a 'person interested' within the meaning of s 14 of the LAA 1960. The non-service of Form E on the appellants did not invalidate the enquiry and the award made at the conclusion of the enquiry pursuant to ss 11(1) and 56 of the LAA 1960 (see paras 20, 22, 24 & 26–27).

(4) The appellants failed to prove on balance of probabilities that the land was not used for a public purpose but was instead occupied by squatters as pleaded in the amended statement of claim. It was trite law that s 68A of the LAA 1960 allowed the land to be disposed of by either the state

authority or the government or any other corporation for any purpose other than that for which it was acquired (see paras 28–29). A

[Bahasa Malaysia summary

Sebahagian daripada sebidang tanah ('tanah tersebut') yang dimiliki bersama-sama oleh perayu pertama ('R1') dan mendiang suaminya, dan dipajak kepada responden keempat ('MARA') sebagai cagaran bagi pinjaman, yang diperoleh Kerajaan melalui permohonan kepada responden kelima ('UDA') bagi tujuan awam. Responden kedua ('R2') dilantik di bawah s 12 Kanun Tanah Negara agar bertanggungjawab bagi pengambilan alih tersebut. Semasa inkuiri tanah, yang R1 gagal hadiri, diputuskan bahawa pampasan yang perlu dibayar bagi pengambilan alih tersebut akan digunakan untuk menebus tanah daripada MARA dan apa-apa baki yang ada selepas itu akan dibayar kepada perayu-perayu. Berikutan bayaran dan jumlah yang terhutang pada MARA, perayu-perayu enggan menerima baki RM8,308.57 yang terhutang pada mereka dan jumlah tersebut dibayar kepada mahkamah di bawah s 29(2) Akta Pengambilan Tanah 1960 ('APT'). Perayu-perayu mengambil tindakan terhadap responden-responden bagi pelbagai pengisytiharan dan ganti rugi bagi pengambilan tanah salah atau secara penipuan. Mahkamah Tinggi menolak tuntutan perayu-perayu yang memutuskan bahawa memandangkan kes yang diplidkan terhadap responden pertama ('R1') tidak terbukti, lain-lain dakwaan terhadap responden kedua, ketiga dan kelima tidak boleh kekal. Hakim bicara memutuskan perayu-perayu telah memplidkan tanah yang diambil alih oleh R1 bagi responden kedua, ketiga dan kelima sedangkan keterangan menunjukkan R1 dan R1 yang bertanggungjawab bagi pengambilan alih tersebut. Dalam rayuan ini terhadap keputusan tersebut, perayu-perayu menghujahkan hakim bicara terkhilaf dalam: (a) memutuskan R1 tidak terlibat dalam pengambilan tanah; (b) gagal mengambil kira Borang G, H dan K di bawah APT tidak diserahkan pada perayu-perayu kerana diperlukan secara wajib; dan (c) gagal mempertimbangkan tanah tersebut tidak digunakan bagi tujuan awam yang menjadi sebabnya diambil.

Diputuskan

(1) Perayu-perayu terikat dengan pliding mereka. Kes yang diplidkan oleh mereka adalah R1 secara salah dan penipuan mengambil alih dan bahawa responden-responden bertanggungan secara vikarius bagi tindakan-tindakan R1. Perayu-perayu gagal membuktikan fakta yang menyokong kes yang diplidkan. Keterangan dalam rekod jelas menunjukkan R1 tidak terlibat secara langsung dalam pengambilan alih tanah tetapi R2 yang sebenarnya bertanggungjawab. Oleh kerana permohonan bagi pengambilan alih dibuat oleh UDA, satu agensi Persekutuan, proses pengambilan alih jatuh di bawah tanggungjawab R2. Proses pengambilan alih adalah tanggungjawab R1 hanya jika

permohonan tersebut dibuat oleh agensi negeri. Menurut saksi R2, penglibatan R1 dalam pengambilan alih hanya hingga tahap permohonan mengambil alih tanah yang diberi kepada R1 oleh UDA. Seterusnya, permohonan ini dikemukakan kepada R2 bagi tindakan lanjut (lihat perenggan 9–13).

(2) Berdasarkan keterangan, hakim bicara membuat keputusan yang betul dalam memutuskan R1 tidak terlibat dalam pengambilan alih tanah. Perayu-perayu telah memplidkan kes spesifik bahawa R1 bertanggungjawab bagi pengambilan alih. Walau bagaimanapun, semasa pengemukaan keterangan, dakwaan yang sangat baharu dibuat, iaitu, R2 yang bertanggungjawab bagi pengambilan alih tanah (lihat perenggan 14–15).

(3) Dalam hal keadaan kes ini, kegagalan menyerahkan Borang G, H dan K kepada perayu-perayu bukan kerana kecuaian atau lepas pandang atau apa-apa sebab tersembunyi oleh R2. Menurut SP2, Borang E tidak dapat diserahkan kepada perayu-perayu kerana alamat mereka tidak dinyatakan dalam dokumen hak milik tanah. Borang E diserahkan kepada MARA kerana tanah tersebut dipajakkan pada MARA yang berhak mendapat bayaran bagi jumlah terhutang di bawah pajakan daripada pampasan wang yang perlu dibayar. R2 betul dalam menyerahkan Borang G MARA kerana sebagai pemajak, R2 adalah 'orang berkepentingan' dalam maksud s 14 APT. Kegagalan menyerahkan Borang E perayu-perayu tidak mengesahkan inkuiri dan award yang dibuat pada penutup inkuiri di bawah ss 11(1) dan 56 APT (lihat perenggan 20, 22, 24 & 26–27).

(4) Perayu-perayu gagal membuktikan atas imbangan kebarangkalian bahawa tanah tersebut tidak diguna bagi tujuan awam tetapi sebaliknya dihuni oleh setinggan seperti yang diplidkan oleh penyata tuntutan. Adalah undang-undang matan di bawah s 68A APT membenarkan tanah yang hendak dilupuskan melalui pihak berkuasa negeri atau kerajaan atau mana-mana koperasi bagi apa-apa tujuan selain yang menjadi sebab pengambilan alihnya (lihat perengan 28–29).]

Notes

For cases on departure from pleadings, see 2(4) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 7440–7453.

Cases referred to

Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia [2011] 2 MLJ 729; [2010] 8 CLJ 761, FC (refd)

Heritage Grand Vacation Club Bhd v Pacific Fantansy Vacation Sdn Bhd [2016] 4 MLJ 389; [2016] 7 CLJ 679, CA (refd)

Nandkishore Lalbhai Mehta v New Era Fabrics Pvt Ltd & Ors [2015] (9) SCC 755, SC (refd)
Perbadanan Kemajuan Pertanian Negeri Selangor v JW Properties Sdn Bhd [2017] MLJU 1107; [2017] 8 CLJ 392, FC (refd)
Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore [1975] 1 MLJ 241, FC (refd)
Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang [1977] 2 MLJ 45 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 2, 11(1), 14, 14(1), 16(1), 22, 29(2), 56, 68A, Second Schedule, Forms E, G, H, K
National Land Code s 12

Appeal from: Civil Suit No 21NCVC–10–05 of 2014 (High Court, Pulau Pinang)

N Ahilan (N Ahilan & Assoc) for the appellants.
Siti Fatimah Talib (Charanjit Singh with her) (State Legal Advisor, Penang State Legal Advisor's Office) for the first respondent.
Nurul Huda bt Mohd Salehuddin (Senior Federal Counsel, Attorney General's Chambers) for the second respondent.
Badrul Hisham (Badrul, Samad, Faik & Co) for the third respondent.
Leslie Bala (Jasreen Kaur with her) (Othman Hashim & Co) for the fifth respondent.

Zawawi Salleh JCA (delivering judgment of the court):

INTRODUCTION

[1] The appeal stems from the decision of the High Court at Penang dated 4 August 2015, dismissing the appellants'/plaintiffs' claim with costs of RM15,000 to be paid to each respondents/defendants except the fourth respondent/defendant.

[2] The appellants/plaintiffs had filed a civil suit against the respondents/defendants for declaration and damages for an alleged wrongful and fraudulent acquisition of an undivided land known as Lot No 29, GRN GM No 86, Daerah Seberang Perai Tengah MK1 Pulau Pinang ('the said land') by the first respondent/defendant which is owned by the first appellant/plaintiff and her deceased husband.

[3] The appellants/plaintiffs sought, inter alia, for a declaration that the acquisition of the said land is null and void and that the fourth and fifth respondents/defendants have no rights or interest upon the said land.

[4] We have heard learned counsel for the parties and perused the impugned judgment as well as material on record. We dismissed the appeal and affirmed the decision of the learned trial judge. We made no order as to costs. We gave brief reasons for our decision at that time and we now elaborate on those reasons.

FACTS OF THE CASE

[5] In order to appreciate the legal issues involved in this appeal, it is necessary to state a few relevant facts as follows:

(a) The first appellant/plaintiff and her deceased husband respectively own 1/2 the undivided share of the said land. The said land has been charged to MARA (the fourth respondent/defendant) as security for a loan of RM70,000 to one Ismail bin Ahmad and Senthilvel a/l Visvanathan;

(b) part of the land was acquired for a public purpose, ie for 'Project Pembangunan Kawasan Jawatankuasa Pemandu'. The fifth respondent/defendant was the pay master. The second respondent/defendant was appointed pursuant to s 12 of the National Land Code ('the NLC') to be in charge and responsible for the acquisition;

(c) notice of enquiry (Form E) was issued. The enquiry was held on 10 January 1995 before one Encik Mohamad Amin bin Abu Bakar in the presence of the officers from the respondents/defendants:

(i) Shamsudin bin Ashaari (MARA representative);

(ii) Lam Siew Phah (Officer from Department of Valuation and Property Management, Butterworth); and

(iii) Wan Jaafar bin Wan Abdullah (UDA representative);

(d) the first appellant/plaintiff had failed to attend the hearing of the acquisition of the said land;

(e) during the said hearing, it was decided that the total compensation sum of RM186,435 is to be made payable to the fourth respondent/defendant being the chargee of the said land. It was also decided that any sum remaining upon payment of the loan should be made payable to the appellants/plaintiffs;

(f) subsequently, the first respondent/defendant issued the following forms:

27 June 1995 — Written award of compensation in Form G;

26 July 1995 — Notice of award and offer of compensation in Form H; and

13 September 1995 — Notice that possession had been taken of

the said land (Form K) under s 22 of the Land Acquisition Act 1960 ('the LAA 1960');

(g) Forms E, G, H and K were not served on the appellants/plaintiffs because the first defendant could not locate the appellants/plaintiffs;

(h) on 21 September 1998, the fifth respondent/defendant paid to MARA (the fourth respondent/defendant) a sum of RM97,126.43 being the unsettled loan sum. The sum of RM89,308.57 was due to the appellants/plaintiffs upon full settlement of the loan sum which the appellants/plaintiffs had refused to accept;

(i) thus, on 1 August 2011, Penang High Court vide Summons No 24–11–1274 of 2011, had directed the compensation sum of RM89,308.57 to be paid into court pursuant to s 29(2) of the LAA 1960;

(j) the appellants/plaintiffs filed a civil suit against the respondents/defendants seeking for declarations and damages for an alleged wrongful and fraudulent acquisition of the said land as follows:

(i) Suatu deklarasi bahawa pengambilan tanah oleh defendan melalui seksyen 22 pengambilan tanah lot No. 29, GRN GM No. 86 Daerah Seberang Perai Tengah, MK 1, Pulau Pinang adalah terbatal dan salah (null and void) dan bertentangan kepada Perkara 13 Perlembagaan Persekutuan dan juga bertentangan dengan Seksyen 11, 12 dan 16 Akta Pengambilan Tanah 1960 dan bahawa pengambilan tanah tersebut hendaklah terbatal dan dikembalikan kepada Plaintif.

(ii) Suatu deklarasi bahawa pampas an yang dikatakan diawardkan adalah tidak mencerminkan harga pasaran yang terkini.

(iii) Suatu deklarasi bahawa penglibatan Defendan Kedua adalah tidak menepati maksud pengambilan Hartanah bagi kegunaan awam.

(iv) Suatu deklarasi bahawa Defendan-Defendan Ketiga dan Kelima tidak ada hak atau kepentingan atas Hartanah tersebut sedang tiada apa-apa pembangunan bagi tujuan memajukan Hartanah tersebut.

(v) Pada alternatifnya Defendan membayar pampasan yang munasabah sejajar dengan harga pasaran yang terkini bagi Hartanah tersebut.

(vi) Defendan Pertama membayar ganti rugi khas atas kehilangan menggunakan Hartanah tersebut.

(vii) Kerugian yang dialami oleh Plaintif-Plaintif atas pencerobohan yang dilakukan oleh defendan atau pihak-pihak di bawahnya.

(viii) Defendan Ketiga hendaklah membayar ganti rugi khas atas

menyebabkan pencerobohan atas Hartanah Plaintif dan juga gagal mengambil tindakan susulan bagi maksud kegunaan awam.

(ix) Defendan Keempat hendaklah memulang balik wang tebusan yang diterima kepada Defendan Pertama atas sebab pengambilan Hartanah bagi maksud kegunaan awam telah gagal.

(x) Suatu Perintah mengarahkan Defendan (Pentadbir Tanah Daerah) dan/atau pihak berkuasa berkenaan Pendaftaran Hakmilik Tanah hendaklah melakukan yang sepatutnya untuk memberi efek atau kesan kepada Perintah ini.

(xi) Kos.

(xii) Lain-lain Perintah atau relif yang Mahkamah Yang Mulia ini anggap suaimanfaat.

(k) as alluded to earlier, the learned trial judge dismissed the appellants'/plaintiffs' claim with costs of RM15,000 to be paid to each respondents/ defendants except the fourth respondent/ defendant; and

(l) dissatisfied with the impugned decision, the appellants/plaintiffs appealed to this court. Hence, this appeal before us.

FINDINGS OF THE LEARNED TRIAL JUDGE

[6] The learned trial judge, after considering the evidence on record, held that the appellants/plaintiffs had failed to prove their case against the first respondent/defendant rendering other allegations against the second, third and fifth respondents/defendants as baseless and without merit.

[7] The reasoning of the learned trial judge in reaching the conclusion that he did, may be summarised as follows:

(a) the first respondent/defendant had not been involved in the acquisition of the said land;

(b) the appellants/plaintiffs had failed to plead that the second respondent/defendant was responsible for the acquisition of the said in the amended statement of claim although during the trial the evidence before court showed that the second respondent/defendant was responsible for the acquisition of the said land; and

(c) the appellants/plaintiffs had instead pleaded in their amended statement of claim that the said land had been wrongly acquired by the first respondent/defendant for the second, third and fifth respondents/defendants.

THE APPEAL

[8] Before us, learned counsel for the appellants/plaintiffs raised the followings grounds in assailing the decision of the learned trial judge:

(a) that the learned trial judge erred in fact and law in holding that the first respondent/defendant was not involved in the acquisition process of the said land;

(b) that the learned trial judge erred in fact and in law in failing to take into consideration that the Forms G, H, and K were not served on the appellants/plaintiffs; and

(c) that the acquired land was not used for public purposes.

OUR FINDINGS

First ground

[9] At the outset and before going further, it is appropriate for us to reiterate the trite law that the appellants/plaintiffs are bound by their own pleadings. In *Heritage Grand Vacation Club Bhd v Pacific Fantansy Vacation Sdn Bhd* [2016] 4 MLJ 389; [2016] 7 CLJ 679 (CA), this court said:

> [4] It is well-established that it is not the function of the court to build a case for the plaintiff/defendant inconsistent with the pleaded case. In *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152; [1990] 1 CLJ 1113; [1990] 1 CLJ Rep 330, the Supreme Court had in strong terms held, and which still stands as a 'gold standard' in pleading rules and evidence, as follows:
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> > *It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings.* The trial of a suit should be confined to the pleas on which the parties are at variance. (Emphasis added.)
>
> [5] The above case must be seen to be the 'gold standard' for pleading rules and is consistent with a long line of authorities from England as well as Malaysia (see *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] 1 LNS 42; *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428; [1991] 1 CLJ 667; [1991] 1 CLJ Rep 239; *KEP Mohamed Ali v KEP Mohamed Ismail* [1981] 2 MLJ 10; [1980] 1 LNS 169). In *Recaliva Design Steel (M) Sdn Bhd v Vista Access Sdn Bhd* [2008] 6 MLJ 604; [2008] 10 CLJ 491, Hamid Sultan JC (as he then was) on pleading rules and issues to be tried made the following observations:
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> > After having heard the evidence of the defendants, it is crystal clear to me that the version defendants attempted to project to me was never part of their defence. In such circumstances, the court is not obliged to consider in its judgment, stories which are not reflective of the pleadings. Pleadings are essential foundation to

A analyse disputes. Evidence must relate to pleadings and/or directly relevant to pleadings. The court is not concerned what issues the parties have framed for the determination of the court, when such issues cannot be reflective of the issues to be dealt with pursuant to the pleadings.

B **[10]** The appellants/plaintiffs' pleaded case is that the first respondent/defendant had wrongly and fraudulently acquired the said land and the said other respondents/defendants are vicariously liable for the first respondent/defendant's wrongful acquisition of the said land which was not utilised for public purpose.

C

[11] The appellants/plaintiffs had not established the facts in support of their pleaded case. The evidence on record clearly showed that first respondent/defendant was not directly involved in the process of acquiring the said land. It is clear that the second respondent/defendant was responsible for the acquisition of the said land. The first respondent's/defendant's witness, Marhaini bt Abu Bakar (SD1) testified that:

D

> Pengambilan tersebut tidak dijalankan oleh PDT SPT disebabkan pengambilan balik tanah tersebut adalah bagi projek bertujuan awam iaitu Projek Pembangunan Kawasan Jawatankuasa Pemandu (JKP) oleh Perbadanan Pembangunan Bandar (UDA) di bawah pengendalian Jabatan Ketua Pengarah Tanah dan Galian Pulau Pinang (JKPTG) yang merupakan sebuah agensi Kerajaan Persekutuan.
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> Walaubagaimanapun, bagi maksud pengambilan balik tanah, pegawainya boleh dilantik sebagai Pentadbir Tanah dan diberi kuasa untuk mengendalikan siasatan pengambilan tanah di bawah seksyen 12 Akta Pengambilan Balik Tanah 1960 atas nama Pejabat Tanah Daerah sepertimana dalam kes ini. Agensi pembayaran bagi kes ini adalah UDA dan Defendan Pertama tidak terlibat langsung dengan apa-apa bayaran dan proses pengambilan.

E

F

G

[12] It is undisputed fact that in the present case, the application for acquisition of the said land was by the fifth respondent/defendant which is a federal agency, thus the acquisition of the said land is under the responsibility of the second respondent/defendant and the fifth respondent/ defendant was the 'pay master'. The process of acquiring a land will be under the responsibility of the first respondent/defendant if the application for acquisition of land is by a state agency.

H

[13] According to the second respondent's/defendant's witness, the involvement of the first respondent/defendant in the acquisition of the said land was only to the extent that the application to acquire the land was sent to the first respondent/defendant by the fifth respondent/defendant. Subsequently, the application was forwarded to second respondent/defendant for further action.

I

[14] We are satisfied that the learned trial judge had made a correct decision in holding that the first respondent/defendant was not involved in the acquisition of the said land as alleged by the appellants/plaintiffs. This was amply supported by the evidence on record and we see no reason to interfere.

[15] The appellants/plaintiffs had pleaded as specific case that the first respondent/defendant was responsible for the acquisition of the said land. However, at the time of leading of evidence, a completely new allegation was made, ie that it was the second respondent/defendant who was responsible for the acquisition of the said land.

[16] In *Nandkishore Lalbhai Mehta v New Era Fabrics Pvt Ltd & Ors* [2015] (9) SCC 755, the Supreme Court of India held:

> 12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.
>
> 13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

The second ground

[17] Learned counsel for appellants/plaintiffs vehemently argued that the Forms G, H, and K were not served on the appellants/ plaintiffs rendering the entre process of acquisition on the said land invalid and/or unlawful.

[18] Learned counsel for the appellants/plaintiffs submitted that since the mandatory requirements under ss 14(1) (written award of compensation), 16(1) (notice of award and after of compensation) were s 22 (notice that possession has been taken of the land) of the LAA 1960, are not complied with by the first respondent/defendant while acquiring the said land, the entire acquisition proceedings ought to have been declared as null and void by the High Court.

[19] The requirement was a substantial right and could not be taken away as a side wind. Acquisition of land is a serious matter. It may result in depriving a registered owner of the land not only of his property but also his profession, livelihood and social security. Therefore, all the formalities of serving notice to the registered owner of the land has to be mandatorily complied with in the manner provided under the LAA 1960.

[20] With respect, in the circumstances of the present appeal, we disagree with the submission. The non-service of the relevant Forms on the appellants/plaintiffs was not due to negligence or oversight or due to any ulterior reasons on the part of the second respondent/ defendant. According to SP2, Form E could not be served on the appellants/plaintiffs because the appellants'/plaintiffs' address was not stated in the document of title of the said land. Form E was served on MARA (the fourth respondent/defendant) because the said land has been charged to the fourth respondent/defendant as security for a loan of RM70,000.

[21] During the enquiry, the second respondent/defendant was informed by the representative of the fourth respondent/defendant of the charge held in its favour over the land which had been compulsorily acquired, and laid claim to payment of the compensation monies pursuant to the terms of charge in the sum of RM186,435.

[22] As the chargee of the said land, the fourth respondent/defendant is entitled to payment of the amount owing in the sum of RM186,435 and any sum remaining upon payment of the loan should be made payable to the appellants/plaintiffs.

[23] The fourth respondent's/defendant's security interest under the charge has not been acquired nor can it be acquired pursuant to the LAA 1960. The fourth respondent/defendant is, therefore, entitled to the unsettled loan sum of RM97,126.43 from the payment of the compensation of the said land.

[24] It must be noted that s 2 of the LAA 1960 defines the term 'person interested' to include every person claiming an interest in compensation to be made on account of the acquisition under LAA 1960. In our view, the second

respondent/defendant was correct in serving Form G on the fourth respondent/defendant. This is because the fourth respondent/defendant as the chargee of the said land should be construed as a 'person interested therein' within the meaning of s 14 of the LAA 1960 (see *Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia* [2011] 2 MLJ 729; [2010] 8 CLJ 761).

[25] In *Perbadanan Kemajuan Pertanian Negeri Selangor v JW Properties Sdn Bhd* [2017] MLJU 1107; [2017] 8 CLJ 392, the Federal Court held at para [47] that the notice under Form E (Second Schedule) of the LAA 1960 is required to be served on person interested to appear before the land administrator which includes all persons having interest in the said land, whether as proprietor, occupier, lessee, *chargee*, tenant or otherwise.

[26] It is clear that non-service of Form E on the appellants/plaintiffs would not invalidate the inquiry conducted on 10 January 1995 and the award made thereto. Proviso to s 11(1) provides:

> Provided that no omission or failure to serve such notice upon any person falling under paragraph (b) or (c) shall invalidate any enquiry held pursuant to the notice or any award made upon the conclusion of the enquiry if, by reason of damage or deterioration of the register document of title to such land, such person cannot be ascertained.

[27] Further, s 56 of the LAA 1960 provides:

> 56 Omission, etc, not to invalidate proceedings
>
> No omission or failure to make due publication of a notice or to make due service upon persons and parties interested as provided for in this Part shall invalidate any proceedings under this Act.

The third ground

[28] In our view, the appellants/plaintiffs had failed to prove on the balance of probabilities that the said land was not used for a public purpose but was instead occupied by squatters as pleaded in the amended statement of claim. We say so for the following reasons:

(a) the appellant's/plaintiff's witness, one Fook Tone Huat, during trial had testified that he was unsure of whether the five units of houses on the said land were actually squatters; and

(b) the first appellant/plaintiff during trial had testified that she was unsure which of the lands was occupied by the squatters ie whether the said land acquired by the respondent/defendant or the land that belonged to appellants/plaintiffs.

[29] It is trite law that s 68A of the LAA 1960 allows for the land to be disposed of by either the state authority or the government or any other corporation for any other purpose other than that for which it was acquired.

[30] In *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45, the court had this to say:

(1) the government was the sole authority to decide what is, or, what is not, a public purpose, and the decision by the government in this respect could not be questioned by a civil court;

(2) it would not be possible or practical to specify the exact purpose of any particular lot. If the land was acquired for a public purpose the plaintiffs had no choice but to surrender the land to the government, and it was immaterial to them for what purpose the land was used, as long as it was for a public purpose; and

(3) there was no need for the State authority to confine its acquisition of land to purposes which came under one head only, ie either under s 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be.

[31] In *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v Government of the State of Johore* [1975] 1 MLJ 241, the Federal Court held that:

> the declaration issued under s 8 of the Land Acquisition Act in this case was conclusive evidence that the lands referred to therein were needed for the purpose specified therein and therefore there was no merit in the contention that the acquisition proceedings were null and void.

CONCLUSION

[32] We have given our anxious consideration to issues raised by the appellants/plaintiffs and found them to be totally bereft of merit. Resultantly, we dismissed the appeal with no order as to costs. So ordered.

Appeal dismissed, with no order as to costs.

Reported by Ashok Kumar